



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

November 21, 2007

Control #: SB/SE 20-1107-021
Expiration: February 28, 2008
Impacted IRM: 20.1.2

MEMORANDUM FOR COMMISSIONER FOR LARGE AND MID-SIZE BUSINESS
DIVISION
COMMISSIONER FOR SMALL BUSINESS/SELF-EMPLOYED
DIVISION
COMMISSIONER FOR WAGE & INVESTMENT DIVISION

FROM: Linda E. Stiff /s/ Linda E. Stiff
Deputy Commissioner for Services and Enforcement

SUBJECT: Substitute for Return Processing Guidelines

This memorandum implements the correct procedures for processing Individual Master File (IMF) Substitute-for>Returns (SFR) or IMF Automated Substitute-for>Returns (ASFR) under the provisions of IRC § 6020(b). This memorandum expands and replaces the Interim Guidance Memorandum (SBSE-20-0207-002) Substitute for Return Processing Guidelines, dated February 23, 2007. Adherence to these procedures is necessary to ensure failure to pay (FTP) penalties are sustained in Tax Court.

The FTP penalty under IRC § 6651(a) (2) applies when the taxpayer fails to pay the amount shown as tax on a return. This penalty is subject to Tax Court jurisdiction. When the taxpayer has not filed an income tax return, the Service needs to create a valid § 6020(b) return to apply the FTP penalty. See IRC § 6651(g).

The Tax Court has determined that a document or set of documents signed by an authorized Internal Revenue Service officer or employee is a return under IRC § 6020(b) if the document or set of documents:

- (1) identifies the taxpayer by name and taxpayer identification number,
- (2) contains sufficient information from which to compute the taxpayer's tax liability,
- and
- (3) purports to be a valid 6020(b) return.

The Tax Court does not consider a mere assessment of tax or FTP penalty to constitute a "return" under the provisions of IRC § 6651(a) (2) and will not sustain the penalty.

Therefore, to sustain a FTP penalty on a taxpayer who has not filed a return, the Service must, IN ALL CASES, properly process a § 6020(b) return or have the taxpayer sign an appropriate return according to the following procedures.

All examiners need to certify, in accordance with § 6020(b), that their adjustments, supported by specific documents, are to be treated as the return filed by the taxpayer for purposes of determining the FTP penalty. Once a valid § 6020(b) return has been created, the Service can assert the FTP penalty in accordance with IRC § 6651(g).

There are two different processes for certifying a valid IMF IRC § 6020(b) return. The first is the ASFR and Exam RGS/Batch procedures used in certain campuses. The other is the Form 13496, IRC Section 6020(b) Certification procedures used by field employees and units in campuses that do not run the ASFR and Exam RGS/Batch procedures. The following describes the correct procedures for each process:

ASFR and Exam RGS/Batch Procedures

The ASFR and Exam RGS/Batch IRC § 6020(b) Certification and attached documents are generated systemically. The ASFR procedures for IMF 6020(b) returns are contained in IRM 5.18.1, Automated Substitute for Return (ASFR) Program and the Exam RGS/Batch procedures for IMF 6020(b) returns are contained in IRM 4.19.17, Non-Filer Program.

Under ASFR and Exam RGS/Batch procedures, the data that constitutes a valid return under § 6020(b) includes computation of the taxpayer's tax liability for the tax period in question and a completed Electronic ASFR Certification form with the electronic signature of the delegated IRS employee.

Form 13496 Procedures

Form 13496 requires that the data constituting a valid return under § 6020(b) to include:

- Form 4549, Income Tax Examination Changes (or the equivalent such as Form 4549-A),
- Form 886-A, Explanation of Items (or the equivalent), and
- Form 13496 which is properly signed and dated.

Form 13496 must be completed with a live signature if not generated systemically through the ASFR and Exam RGS/Batch procedures and must be dated on or after the date the 30-day letter (or revised 30-day letter) is signed and dated such that the date of the certification is identical to, or later than, the 30-day letter. The completed Form 13496 must be attached to the Forms 4549 or the equivalent such as Form 4549-A and Form 886-A.

Anyone authorized to prepare and issue reports of proposed tax adjustments is authorized to sign the Form 13496. (See D.O. 182 in IRM 1.2.44.5.) Whenever the

examiner (or a subsequent reviewer) revises a report of proposed adjustments that increases the total tax liability of the taxpayer (without regard to whether or not the revised report is reissued to the taxpayer), a re-certification is required on another Form 13496 dated on (or after) the same day as the revised report.

A Form 13496 may not be prepared or dated after the date of the 90-day letter. The 10/2005 version of Form 13496 must be used to create the § 6020(b) return. **(Note for LMSB and SB/SE: RGS does not auto-populate the signature box; a valid signature must be entered manually).**

When the report of proposed adjustments involves more than one tax year, create a separate Form 13496 for each year and attach each one to a photocopy of the report for each year.

Agreed Adjustments:

If the taxpayer agrees with the adjustments on Form 4549 (or similar Form 870), the examiner should have the taxpayer sign Form 4549 (or Form 870), and put it and a copy of the § 6020(b) return in the case file¹.

Unagreed Adjustments:

If the taxpayer does not sign a return or an agreement, the Service should place the §6020(b) return, as described above, in the file.

Following these guidelines will ensure that the criteria in Treasury Regulation §301.6020-1T for creating a valid § 6020(b) return have been met.

If you have any questions, please contact Barbra Harris, SB/SE Acting Director, Examination Policy or a member of your staff may contact Deborah Maxwell, Senior Tax Analyst, Servicewide Penalties.

cc: www.irs.gov

¹ If the taxpayer agrees with the adjustments but wants to make the election to file a joint return, the taxpayer MUST file a return making the married filing joint election. Signing only Form 4549 or Form 870 without the appropriate return form is not sufficient for making the election. Rev. Rul. 2005-59, 2005-37 IRB.